STATE OF MICHIGAN

COURT OF APPEALS

WARREN HALL,

Plaintiff-Appellant,

v

CONSUMERS ENERGY COMPANY and PMC CONSTRUCTORS AND TECHNICAL SERVICES, LLC,

Defendants-Appellees.

UNPUBLISHED
May 30, 2006

No. 259634
Charlevoix Circuit Court
LC No. 03-176019-NZ

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition of his claims for retaliatory discharge in violation of public policy and the Whistleblower's Protection Act (WPA), MCL 15.361 *et seq*. We affirm the summary dismissal of plaintiff's claim under the WPA, but reverse and remand as to plaintiff's claim of wrongful discharge in violation of public policy.

Plaintiff worked for defendant PMC Constructors and Technical Services, LLC (PMC) as a carpenter at a nuclear power plant owned by defendant Consumers Energy Company. During his employment, plaintiff allegedly reported numerous regulatory safety violations to PMC management, including three written "condition reports" that PMC was required to forward to the federal Nuclear Regulatory Commission (NRC). PMC eventually laid plaintiff off, citing a lack of work.

After learning that PMC had retained less experienced carpenters, plaintiff filed the instant suit alleging that he was discharged for having raised and reported regulatory violations, in violation of both public policy and the WPA. Although plaintiff timely served PMC's registered agent by mail, the complaint erroneously named a different but similar entity and the agent returned the documents. Plaintiff thereafter filed and served an amended complaint, but after the 90-day limitations period set by the WPA had expired. See MCL 15.363(1). Finding that the WPA constituted the exclusive remedy for plaintiff's claim of retaliatory discharge but was time-barred, the trial court dismissed plaintiff's complaint.

On appeal, plaintiff argues that the trial court erred in granting summary disposition of his claim under the WPA. Because we conclude on review de novo that plaintiff was not

engaged in activity protected by the WPA, we disagree.[1] *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357; 597 NW2d 250 (1999) (a trial court's grant of summary disposition is reviewed de novo).

An employee is engaged in a protected activity under the WPA if he has reported or is about to report a suspected violation of a state or federal law, regulation, or rule to a public body. *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604, 610; 566 NW2d 571 (1997). A "public body" under the WPA is any body that is created or primarily funded by state or local authority, including a member of that body. See *Manzo v Petrella*, 261 Mich App 705, 713-714; 683 NW2d 699 (2004); see also MCL 15.361(d). Here, plaintiff alleged in his complaint that he was wrongfully discharged for having reported or attempted to report suspected nuclear regulatory violations to the NRC. Such activity involves the report or attempt to report allegedly unlawful conduct to a body created and funded by a federal, rather than state or local, authority. Thus, plaintiff was not engaged in activity protected by the WPA, i.e., the report of suspected unlawful conduct to a "public body," and the act is, therefore, inapplicable under the facts of this case. Summary disposition of plaintiff's claim under the WPA was therefore proper, as the act provides no remedy for his allegation of retaliatory discharge.

However, because the WPA provides no remedy for plaintiff's allegation of retaliatory discharge, the trial court erred in also dismissing plaintiff's claim that his discharge constitutes a violation of public policy. It is well settled that because the WPA represents Michigan's public policy against discharge for reporting suspected violations of law to a public body, any public policy claim of wrongful discharge arising from such activity is preempted by the WPA. See *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 70, 78-79; 503 NW2d 645 (1993) (the remedies provided by the WPA are exclusive, not cumulative). If, however, the WPA does not apply and provides no remedy, neither then can it be plaintiff's exclusive remedy. *Id*. at 80; see also *Driver v Hanley (After Remand)*, 226 Mich App 558, 566; 575 NW2d 31 (1997). Thus, where, as here, the WPA provides no remedy at all, it cannot constitute a plaintiff's exclusive remedy. *Driver, supra*. Consequently, the trial court erred in holding that the WPA precluded plaintiff's claim for retaliatory discharge in violation of public policy.

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

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[1] Because the WPA is not applicable under the facts of this case, we do not address plaintiff's claim that the "relation back doctrine" operates to bring his amended complaint within the 90-day limitations period set by the act.